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REMARKS

Reconsideration of the above identified application is respectfully requested. Claims 1-20 are pending, and are subject to a Restriction Requirement. Claims 1 and 10 are amended. Applicants respectfully traverse the Restriction Requirement and request withdrawal for the reasons discussed below. If the Examiner maintains the Restriction Requirement, Applicants elect to proceed with Group I claims, namely 1-15.

The Examiner has required restriction between the following allegedly distinct inventions:

- Group I.: An article of footwear having a midsole and an outsole, the midsole joined to the upper and the midsole having a trim line concealed by the outsole (claims 1-15); and
- Group II.: Method of manufacturing an article of footwear having a midsole, upper and forming a flashing (claims 16-20).

Inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) the product as claimed can be made by another and materially different process. MPEP § 806.05(f). The position in the Office Action was that the footwear of claims 1-15 can be formed by “bonding pieces together to form the sidewalls and surfaces *without using a mold* or the midsole could be *cut from stock material*.” (Emphasis supplied.)

The inventions of Group I and Group II are **not** distinct because the independent

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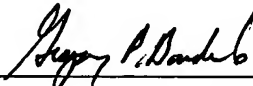
claims of Group I now recite that the midsole is formed with a mold in a molding operation. Specifically, as recited in amended claims 1 and 10, the midsole is formed with a mold in a molding operation—and thus the product *cannot* be formed by the proposed “materially different” processes of bonding pieces together without using a mold, or by cutting the midsole from stock material.

Accordingly, it is respectfully submitted that the Restriction Requirement is improper because the inventions are not distinct under either limitation provided in MPEP § 806.05(f). In view of the foregoing, Applicants respectfully request withdrawal of the Restriction Requirement. Applicants reserve the right to file one or more divisional applications with respect to the non-elected inventions should the Examiner maintain the Restriction Requirement.

Respectfully submitted,

CHARLES C. WILLIS ET AL

By: Warner Norcross & Judd LLP



Gregory P. Bondarenko
Registration No. 44,547
900 Fifth Third Center
111 Lyon Street, N. W.
Grand Rapids, MI 49503-2487
(616) 752-2420